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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EAST BAY FLOORCOVERING, INC., on behalf of itself and all others similarly situated,

Plaintiff,

vs.

HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES, INC., DOMFOAM INTERNATIONAL, INC., THE CARPENTER COMPANY, THE WOODBRIDGE GROUP, FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC., FOAMEX INNOVATIONS, INC., FUTURE FOAM, INC., VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM, INC.,

Defendants.

Case No. CV10 5045

CLASS ACTION COMPLAINT FOR VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff East Bay Floorcovering, Inc. on behalf of itself and all others similarly situated in the United States brings this action for damages and injunctive relief under the Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15, against the Defendants named herein, demanding trial by jury, and complaining and alleging as follows:

NATURE OF THE CASE

1. This lawsuit is brought as a class action on behalf of individuals and entities that directly purchased Polyurethane Foam (as further defined below), in the United States from Defendants, their predecessors, or their controlled subsidiaries and affiliates during the period beginning January 1, 1999 and continuing through the present (the "Class Period"). Plaintiff alleges that during the Class Period the Defendants conspired to fix, raise, maintain or stabilize prices of Polyurethane Foam sold in the United States. Because of Defendants' unlawful conduct, Plaintiff and other Class Members paid artificially inflated prices for Polyurethane Foam and have suffered antitrust injury to their business or property.

2. Plaintiff alleges upon personal knowledge as to itself and its own acts and, as to all other matters, upon information and belief based upon, *inter alia*, the investigation made by and through counsel, as follows. Additional information in support of the claims herein is within the exclusive possession, knowledge and control of Defendants.

JURISDICTION AND VENUE

3. Plaintiff brings this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. § 15 and § 16, to obtain injunctive relief and to recover damages, including treble damages, costs of suit and reasonable attorneys' fees, premised on Defendants' violation of the Sherman Act, 15 U.S.C. § 1.

4. This Court has jurisdiction over the subject matter of this action pursuant to Sections 4(a) and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, and 28 U.S.C. §§ 1331 and 1337.

5. Venue is laid in this District pursuant to 28 U.S.C. § 1391. Venue is proper in this judicial district because during the Class Period one or more of the Defendants resided,

transacted business, was found, or had agents in, this district, and because a substantial part of the events giving rise to Plaintiff's claims occurred in this district, and a substantial portion of the affected portion of the interstate trade and commerce described below has been carried out in this district.

6. The Court has *in personam* jurisdiction over each of the Defendants because, *inter alia*, each of the Defendants: (a) committed acts in furtherance of the conspiracy alleged herein in this District and directed the unlawful conspiracy through persons and entities located in this District, including fixing the prices of Polyurethane Foam sold to purchasers in this District; (b) transacted business in Polyurethane Foam and other products in this District; (c) maintains and has maintained continuous and systematic contacts with this District over a period of years; and (d) purposefully availed itself of the benefits of doing business in this District. Accordingly, each of the Defendants maintains minimum contacts with this District more than sufficient to subject it to service of process and sufficient to comply with due process of law.

DEFINITIONS

7. As used herein, the term Polyurethane Foam refers to different types of foam consisting of polymers made of molecular chains bound together by urethane links. It can be flexible or rigid, but has a low density. Flexible polyurethane foam is most often used in bedding and upholstery, while the more rigid variety is used for thermal insulation and in automobile dashboards.

8. The "Class Period" or "relevant period" means the period from January 1, 1999 through the present.

9. "Person" means any individual, partnership, corporation, association, or other business or legal entity.

PLAINTIFF

10. Plaintiff East Bay Floorcovering, Inc. ("East Bay") is a California corporation with its principal place of business located in Hayward, California. During the relevant period, East Bay directly purchased Polyurethane Foam from one or more of the Defendants or their co-conspirators and has been injured by reason of the antitrust violations alleged in this Complaint.

DEFENDANTS

11. Defendant The Carpenter Company ("Carpenter") is a privately owned and operated company with its principal place of business located at 5016 Monument Avenue, Richmond, Virginia 23230. During the time period covered by this Complaint, Carpenter manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States.

12. Defendant Valle Foam Industries, Inc. ("Valle") is a privately owned and operated corporation with its principal place of business located at 4 West Drive, Brampton, Ontario, L6T 2H7, Canada. During the time period covered by this Complaint, Valle manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States.

13. Defendant Domfoam International, Inc. ("Domfoam") is a subsidiary of defendant Valle with its principal place of business located at 8785 Langelier Blvd., Montreal, Quebec, H1P 2C, Canada. During the time period covered by this Complaint, Domfoam manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States.

14. Defendant Flexible Foam Products, Inc. ("Flexible Foam") is a privately owned and operated Ohio company, with its principal place of business located as 12575 Bailey Road, Spencerville, Ohio 45887 and with operations Texas, Indiana, Florida and Wisconsin. During the time period covered by this Complaint, Flexible Foam manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States.

15. Defendant Foamex Innovations, Inc., formerly known as Foamex International, Inc. ("Foamex"), is a privately owned and operated company with its principal place of business located at Rose Tree Corporate Center II, 1400 N. Providence Road, Suite 2000, Media, Pennsylvania 19063. During the time period covered by this Complaint, Foamex manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States.

16. Defendant Future Foam, Inc. ("Future Foam") is a privately owned and operated company with its principal place of business located at 1610 Avenue N., Council Bluffs, Iowa

51501. During the time period covered by this Complaint, Future Foam manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States.

17. Defendant Hickory Springs Manufacturing Company ("Hickory Springs") is a North Carolina corporation with its principal place of business located at 235 2nd Avenue, NW, Hickory, North Carolina 28601. During the time period covered by this Complaint, Hickory Springs manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States.

18. Defendant Scottdel, Inc. ("Scottdel") is a privately held corporation with its principal place of business located at 400 Church Street, Swanton, Ohio 43558. During the time period covered by this Complaint, Scottdel manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States.

19. Defendant Vitafoam, Inc. is a privately owned and operated company with its principal place of business located at 2215 Shore Drive, High Point, North Carolina 27263. During the time period covered by this Complaint, Vitafoam, Inc. manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States.

20. Defendant Vitafoam Products Canada Limited ("Vitafoam Canada") is a privately owned and operated company with its principal place of business located at 150 Toro Road, North York, Ontario, M3J 2A9, Canada. During the time period covered by this Complaint, Vitafoam Canada manufactured, sold and/or distributed Polyurethane Foam to customers throughout the United States. Vitafoam Canada and Vitafoam, Inc. are collectively referred to herein as "Vitafoam."

21. Defendant The Woodbridge Group ("Woodbridge") is a Canadian corporation with its principle place of business located at 4240 Sherwoodtowne Blvd., Mississauga, Ontario, L4Z 2G6, Canada. During the time period covered by this Complaint, Woodbridge manufactured, sold and distributed Polyurethane Foam to customers throughout the United States.

DEFENDANTS AND CO-CONSPIRATORS

22. Various other persons, firms and corporations, not named as Defendants herein, and presently unknown to Plaintiff, have participated as co-conspirators with Defendants and have performed acts and made statements in furtherance of the conspiracy and/or in furtherance of the anticompetitive, unfair or deceptive conduct.

23. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

24. Each of the Defendants named herein acted as the agent or joint venturer of or for the other Defendants with respect to the acts, violations and common course of conduct alleged herein. Each Defendant which is a subsidiary of a foreign parent acts as the sole United States agent for Polyurethane Foam made by its parent company.

INTERSTATE TRADE AND COMMERCE

25. Throughout the Class Period, there was a continuous and uninterrupted flow of Polyurethane Foam sales in interstate and international commerce throughout the United States.

26. Defendants' unlawful activities, as described herein, took place within the flow of interstate commerce to Polyurethane Foam purchasers located in states other than the states in which Defendants are located, as well as throughout the world, and had a direct, substantial and reasonably foreseeable effect upon interstate and international commerce, including the United States Polyurethane Foam market.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on behalf of itself and as a class action under the provisions of Rule 23 of the Federal Rules of Civil Procedure on behalf of all members of the following class:

> All persons and or entities residing in the United States (excluding Defendants, co-conspirators, their subsidiaries and affiliates, all governmental entities, and any judicial officer presiding over this action, including members of his/her

immediate family and judicial staff) who or which directly purchased Polyurethane Foam in the United States at any time during the period from January 1, 1999 through the present.

28. This action has been brought and may properly be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

a. The Class is ascertainable and there is a well-defined community of interest among members of the Class;

b. Based upon the nature of trade and commerce involved and the number of direct purchasers of Polyurethane Foam, Plaintiff believes that the members of the Class number in the thousands, and therefore are sufficiently numerous that joinder of all Class members is not practicable;

c. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff directly purchased Polyurethane Foam manufactured by Defendants or their co-conspirators, and therefore Plaintiff's claims arise from the same common course of conduct giving rise to the claims of the members of the Class and the relief sought is common to the Class;

d. The following common questions of law or fact, among others, exist as to the members of the Class:

i. Whether Defendants formed and operated a combination or conspiracy to fix, raise, maintain, or stabilize the prices of Polyurethane Foam;

ii. Whether the combination or conspiracy caused Polyurethane Foam prices to be higher than they would have been in the absence of Defendants' conduct;

iii. The operative time period of Defendants' combination or conspiracy;

iv. Whether Defendants' conduct caused injury to the business or property of Plaintiff and the members of the Class;

v. The appropriate measure of the amount of damages suffered by the Class;

vi. Whether Defendants' conduct violates Section 1 of the Sherman Act; and

vii. The appropriate nature of class-wide equitable relief.

e. These and other questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages;

f. After determination of the predominant common issues identified above, if necessary or appropriate, the Class can be divided into logical and manageable subclasses;

g. Plaintiff will fairly and adequately protect the interests of the Class in that Plaintiff has no interests that are antagonistic to other members of the Class and has retained counsel competent and experienced in the prosecution of class actions and antitrust litigation to represent him and the Class;

h. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual joinder of all damaged Class members is impractical. The damages suffered by the individual Class members are relatively small, given the expense and burden of individual prosecution of the claims asserted in this litigation. Thus, absent the availability of class action procedures it would not be feasible for Class members to redress the wrongs done to them. Even if the Class members could afford individual litigation, the court system could not. Further, individual litigation presents the potential for inconsistent or contradictory judgments and would greatly magnify the delay and expense to all parties and the court system. Therefore, the class action device presents far fewer case management difficulties and will provide the benefits of unitary adjudication, economy of scale and comprehensive supervision in a single court;

i. Defendants have acted, and/or refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole; and

j. In the absence of a class action, Defendants would be unjustly enriched because they would be able to retain the benefits and fruits of their wrongful conduct.

BACKGROUND

29. According to the Polyurethane Foam Association ("PFA"), Polyurethane Foam is "a chemically complex polymeric product having a broad range of load bearing capability and resiliency, offering comfort as cushioning material for furniture, bedding, carpet underlay, and automotive interiors. [Polyurethane Foam] also offers protective shock absorption performance for use in packaging and automotive applications." http://www.pfa.org/faq.html.

30. There are few acceptable alternatives for Polyurethane Foam. In furniture and bedding applications, short staple polyester fiber or cotton may be used, but both alternative materials have poor height recovery characteristics after compression. Steel springs also recover well, but must be insulated from the user with some type of cushioning material. According to the PFA, "comparing [Polyurethane Foam] to alternative materials in the areas of economics, comfort potential, ease of use, and durability, there is not an acceptable substitute for polyurethane foam."

31. In 2009 alone, revenue in the Polyurethane Foam industry was greater than $11 billion.

32. Defendants are amongst the largest and leading providers of Polyurethane Foam in the United States and worldwide. During the Class Period, Defendants handled a substantial percentage of the Polyurethane Foam business and possess significant market share.

33. There has been a recent trend towards consolidation within the industry. Major players within this industry have been active in acquiring smaller companies and other competitors over the course of the last ten years. For example, in 2007, Defendant Carpenter acquired its European competitor, Dumo N.V. Carpenter accounts for approximately 16.3 % of the market share in this industry.

34. Defendants alleged here to be participants in the conspiracy are most of the major North American Polyurethane Foam producers representing a significant portion of the United States market. There are virtually no imports of products in this industry due to the prohibitive freight costs involved in transporting these bulky, low unit-priced products over long distance.

35. Plaintiff and other Class Members purchase Polyurethane Foam from Defendants and incorporate same into a variety of consumer products such as those mentioned above.

36. Polyurethane Foam is commodity-like and highly fungible. That is, Polyurethane Foam manufactured by one Defendant is readily substitutable for Polyurethane Foam manufactured by another Defendant and, therefore, sales are driven primarily by price.

37. The Polyurethane Foam industry has substantial barriers to entry. To enter and maintain a viable competitive presence in the Polyurethane Foam industry requires an expenditure of capital investment and other resources over a long period of time. New entry is thus both expensive and risky.

38. The market for the manufacture and sale of Polyurethane Foam is conducive to the type of collusive activity alleged here.

DEFENDANTS' COLLUSIVE ACTIVITIES

39. In or around February 2010, Defendant Vitafoam voluntarily approached the United States Department of Justice ("DOJ") to report antitrust violations in the Polyurethane Foam industry and to seek acceptance into the DOJ's Corporate Leniency Program.

40. As a result of its application, Vitafoam has received a conditional leniency letter from the DOJ's Antitrust Division. This means that Vitafoam has admitted to participation in a conspiracy to violate the antitrust laws. *See* http://www.usdoj.gov.atr/public/criminal/239583.htm.

41. Several months later, during or around the week of July 26, 2010, it was reported that the FBI, in connection with a "multi-jurisdiction investigation of the pricing practices of polyurethane foam products," raided the offices of certain Defendants.

42. On or about July 27, 2010, news organizations reported that United States FBI agents raided the offices of defendant Carpenter in connection with its potential involvement in a worldwide price fixing and market allocation conspiracy in the market for Polyurethane Foam. News services reported that FBI agents took boxes and bags of information out of the building and forced several of its offices to close. One employee told a local television station that FBI

agents would not let her get her computer and an IT employee stated, "company supervisors sent them home by departments and they were the last to leave."

43. The raid conducted in Virginia was part of a coordinated worldwide probe in the Polyurethane Foam market conducted by United States, European Union ("EU") and Canadian competition regulators.

44. On August 3, 2010, the European Commission ("EC") confirmed in a press release that on July 27, 2010, the EC carried out unannounced inspections at the premises of producers of Polyurethane Foam for potential violations of EU Treaty rules which, inter alia, prohibit certain anti-competitive practices. The inspections were carried out in several EU member states including Belgium, the United Kingdom and Austria.

45. A spokesperson for the DOJ also confirmed the various government investigations, stating "[i]n connection with a multi-jurisdiction investigation of the pricing practices related to polyurethane foam in North America and Europe, the U.S. Government, the European Commission and the Ontario Commissioner of Competition have required that several manufacturers of polyurethane foam, including Carpenter Co. and several of its subsidiaries, produce certain information and documents. Carpenter Co. is being fully responsive and cooperative with these entities to facilitate their review."

46. Collusive behavior within the Polyurethane Foam market is facilitated by membership of Defendants in the numerous trade organizations within the industry. For example, certain Defendants are members of the PFA trade organization. Approximately 70% of Polyurethane Foam manufacturers in the United States are members of the PFA. Certain Defendants are also members of the International Sleep Products Association ("IPSA") trade organization.

47. Defendants and their co-conspirators have engaged in a contract, combination, trust or conspiracy, the effect of which has been to raise the prices at which they sell Polyurethane Foam to artificially inflated levels.

48. Defendants through their officers, directors, and employees, effectuated the aforesaid contract, combination, trust or conspiracy between themselves and their co-conspirators by, among other things:

a. Participating in meetings and conversations, including through various trade associations and committees, to discuss the prices of Polyurethane Foam sold in the United States;

b. Agreeing during those meetings and conversations to charge prices at specified levels and otherwise to increase and maintain prices of Polyurethane Foam sold in the United States;

c. Issuing price announcements and price quotations in accordance with the agreements reached; and

d. Selling Polyurethane Foam to customers in the United States at non-competitive prices.

49. As a direct result of the unlawful conduct of Defendants and their co-conspirators in furtherance of their continuing contract, combination or conspiracy, Plaintiffs have been injured and will continue to be injured in their business and property by paying more for Polyurethane Foam purchased directly from the Defendants and their co-conspirators than they would have paid and will pay in the absence of the combination and conspiracy.

50. Defendants' collusive activity continues and has had the effect of keeping prices at supracompetitive levels.

VIOLATIONS ALLEGED

(Violation of Section 1 of the Sherman Act)

51. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

52. Beginning at a time unknown to Plaintiff, but at least as early as January 1, 1999, and continuing through the present, the exact dates being unknown to Plaintiff and exclusively within the knowledge of Defendants, Defendants and their co-conspirators, entered into a

continuing agreement, understanding, and conspiracy to unreasonably restrain trade and commerce in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

53. In particular, Defendants have combined and conspired to fix, raise, maintain or stabilize the prices of Polyurethane Foam sold in the United States.

54. Defendants, by their unlawful conspiracy, artificially raised, inflated and maintained the market prices of Polyurethane Foam as herein alleged.

55. The contract, combination or conspiracy consisted of a continuing agreement, understanding and concert of action among Defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain and stabilize the prices of Polyurethane Foam they sold in the United States and elsewhere.

56. In formulating and carrying out the alleged agreement, understanding, and conspiracy, the Defendants and their co-conspirators did those things that they combined and conspired to do, including, but not limited to the acts, practices, and course of conduct set forth above, and the following, among others:

a. Participated in meetings and conversations to discuss the prices of Polyurethane Foam;

b. Agreed to manipulate prices and supply of Polyurethane Foam in a manner that deprived purchasers of Polyurethane Foam of free and open competition;

c. Issued price announcements and price quotations in accordance with the agreements reached; and

d. Sold Polyurethane Foam to customers in the United States at non-competitive prices.

57. The combination and conspiracy alleged herein has had the following effects, among others:

a. Price competition in the sale of Polyurethane Foam has been restrained, suppressed and/or eliminated in the United States;

b. Prices for Polyurethane Foam sold by Defendants and their co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels throughout the United States; and

c. Those who purchased Polyurethane Foam from Defendants have been deprived the benefits of free and open competition.

58. As a direct result of the unlawful conduct of Defendants and their co-conspirators in furtherance of their continuing contract, combination or conspiracy, Plaintiffs have been injured and will continue to be injured in their business and property by paying more for Polyurethane Foam purchased directly from the Defendants and their co-conspirators than they would have paid and will pay in the absence of the combination and conspiracy.

59. These violations are continuing and will continue unless enjoined by this Court.

60. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, Plaintiff and the Class seek the issuance of an injunction against Defendants, preventing and restraining the violations alleged herein.

61. As a result of Defendants' and their co-conspirators' violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, Plaintiff seeks treble damages and costs of suit, including reasonable attorneys' fees, pursuant to 15 U.S.C. § 15.

FRAUDULENT CONCEALMENT

62. Throughout the relevant period, Defendants affirmatively and fraudulently concealed their unlawful conduct against Plaintiff and the Class.

63. Plaintiff and the members of the Class did not discover, and could not discover through the exercise of reasonable diligence, that Defendants were violating the antitrust laws as alleged herein until shortly before this litigation was commenced. Nor could Plaintiff and the members of the Class have discovered the violations earlier than that time because Defendants conducted their conspiracy in secret, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection. The conspiracy was by its nature self-concealing.

64. Defendants engaged in a successful, illegal price-fixing conspiracy with respect to Polyurethane Foam, which they affirmatively concealed, in at least the following respects:

a. By agreeing among themselves not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme; and

b. By giving false and pretextual reasons for their Polyurethane Foam price increases during the relevant period and by describing such pricing falsely as being the result of external costs rather than collusion.

65. As a result of Defendants' fraudulent concealment of their conspiracy, Plaintiff and the Class assert the tolling of any applicable statute of limitations affecting the rights of action of Plaintiff and the members of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure;

B. That the Court adjudge and decree that the unlawful conduct, contract, combination and conspiracy alleged herein constitutes a violation of Section 1 of the Sherman Act, as alleged herein;

C. That Plaintiff and the Class recover damages, as provided by the federal antitrust laws, and that a joint and several judgment in favor of Plaintiff and the Class be entered against the Defendants in an amount to be trebled in accordance with such laws;

D. That Defendants, their co-conspirators, successors, transferees, assigns, parents, subsidiaries, affiliates, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on behalf of Defendants, or in concert with them, be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the combinations, conspiracy, agreement, understanding or concert of action, or adopting or following any practice, plan, program or design having a similar purpose or effect in restraining competition;

E. That the Court award Plaintiff and the class it represents pre-judgment and post-judgment interest as permitted by law;

F. That Plaintiff and the members of the Class recover their costs of suit, including reasonable attorneys' fees as provided by law; and

G. That the Court award Plaintiff and the Class it represents such other and further relief as may be necessary and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury of all of the claims asserted in this Complaint so triable.

Dated: November 5, 2010 By: [signature]

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